



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 15-37; FCC 15-21]

Implementation of the STELA Reauthorization Act of 2014.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission (“Commission”) amends its rules to implement certain provisions of the STELA Reauthorization Act of 2014. Collectively, those provisions: extend to January 1, 2020 the good faith negotiation requirements applicable to multichannel video programming distributors (“MVPDs”) and television broadcast stations, and the exclusive contract prohibition applicable to such broadcast stations; prohibit same-market television broadcast stations from coordinating negotiations or negotiating on a joint basis for retransmission consent except under certain conditions; prohibit a television broadcast station from limiting the ability of an MVPD to carry into its local market television signals that are deemed “significantly viewed” or that otherwise are permitted to be carried by the MVPD, with certain exceptions; and eliminate the “sweeps prohibition” in the Communications Act of 1934, as amended (“the Act”).

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Raelynn Remy, Raelynn.Remy@fcc.gov, Federal Communications Commission, Media Bureau, (202) 418-2936.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Order, MB Docket No. 15-37, FCC 15-21, which was adopted on February 13, 2015 and released on February 18, 2015. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. This document will also be available via ECFS at <http://fjallfoss.fcc.gov/ecfs/>. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an e-mail to fcc504@fcc.gov or calling the Commission’s Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Paperwork Reduction Act of 1995 Analysis

This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

Document Summary

I. INTRODUCTION

1. In this Order, we amend our rules to implement three provisions of the STELA Reauthorization Act of 2014 (“STELAR”).¹ Collectively, those provisions: (i) extend to January 1, 2020 the good faith negotiation requirements applicable to multichannel video programming distributors (“MVPDs”) and television broadcast stations, and the exclusive contract prohibition applicable to such

¹ See Pub. L. 113-200, 128 Stat. 2059 (2014). The STELAR was enacted on December 4, 2014 (H.R. 5728, 113th Cong.).

broadcast stations;² (ii) prohibit same-market television broadcast stations from coordinating negotiations or negotiating on a joint basis for retransmission consent except under certain conditions;³ (iii) prohibit a television broadcast station from limiting the ability of an MVPD to carry into its local market television signals that are deemed “significantly viewed” or that otherwise are permitted to be carried by the MVPD, with certain exceptions;⁴ and (iv) eliminate the “sweeps prohibition” in section 614(b)(9) of the Communications Act of 1934, as amended (“the Act”).⁵

2. The STELAR requires the Commission, among other things, to undertake several proceedings to adopt new rules, amend or repeal existing rules, and conduct analyses. This proceeding implements sections 101, 103 and 105 of the STELAR.⁶ We address those provisions in one order because their implementation entails no exercise of our administrative discretion and, therefore, notice and comment procedures are unnecessary under the “good cause” exception to the Administrative Procedure Act (“APA”).⁷ We discuss each provision, in turn.

II. DISCUSSION

A. Section 101 of the STELAR: Extension of Sunset Dates in Retransmission Consent Rules

3. We revise § 76.64(b)(3)(ii) of our rules (relating to the retransmission consent exemption for carriage of distant network signals by satellite carriers), § 76.64(l) (relating to the prohibition on exclusive retransmission consent contracts) and § 76.65(f) (relating to the expiration of the reciprocal

² See 47 U.S.C. 325(b)(3)(C) (as amended by section 101 of the STELAR).

³ See *id.* (as amended by section 103(a) of the STELAR).

⁴ See *id.* (as amended by section 103(b) of the STELAR).

⁵ See 47 U.S.C. 534(b)(9) (as amended by section 105 of the STELAR).

⁶ Provisions of the STELAR that we do not implement in this Order will be addressed in other proceedings.

⁷ See 5 U.S.C. 553(b)(B). See also *Metzenbaum v. Federal Energy Regulatory Commission*, 675 F.2d 1282, 1291 (D.C. Cir. 1982) (agency order, issued pursuant to Congressional waiver of certain provisions of federal law that otherwise would have governed construction and operation of Alaskan natural gas pipeline, was appropriately issued without notice and comment under the APA’s “good cause” exception as a nondiscretionary ministerial action); *Komjathy v. Nat’l Transp. Safety Bd.*, 832 F.2d 1294, 1296-97 (D.C. Cir. 1987) (notice and comment is unnecessary where the regulation does no more than repeat, virtually verbatim, the statutory grant of authority), cert. denied, 486 U.S. 1057 (1988).

good faith negotiation requirements) to reflect the new sunset dates established in section 101 of the STELAR. Section 101 amends section 325(b)(2)(C) of the Act by replacing the previous sunset date of December 31, 2014 with a new sunset date of December 31, 2019. Section 101 also amends section 325(b)(3)(C) of the Act to replace the previous sunset date of January 1, 2015 with a new sunset date of January 1, 2020.⁸ Accordingly, we amend §§ 76.64(b)(3)(ii), 76.64(l), and 76.65(f) of our rules to reflect those new sunset dates.

B. Section 103(a) of the STELAR: Ban on Joint Negotiation for Retransmission Consent

4. We also revise § 76.65(b) of our rules (setting forth standards for good faith negotiation) to incorporate new provisions of section 325 added by the STELAR. In particular, section 103(a) of the STELAR revises section 325 by adding new subsection 325(b)(3)(C)(iv), which, read as part of section 325(b)(3)(C) as a whole, requires the Commission to revise its retransmission consent rules:

[to] prohibit a television broadcast station from coordinating negotiations or negotiating on a joint basis with another television broadcast station in the same local market (as defined in section 122(j) of title 17, United States Code) to grant retransmission consent under this section to a [MVPD], unless such stations are directly or indirectly under common de jure control permitted under the regulations of the Commission.⁹

5. In accordance with our statutory mandate in section 325(b)(3)(C), we revise § 76.65(b) of our rules to incorporate this new provision virtually verbatim. Specifically, we repeal § 76.65(b)(1)(viii) of our rules (governing joint negotiation of retransmission consent) and replace that provision with language implementing new section 325(b)(3)(C)(iv) of the Act. We take this action based on our

⁸ See 47 U.S.C. 325(b)(3)(C) (as amended by section 101 of the STELAR) (requiring MVPDs and television broadcast stations to negotiate retransmission consent in good faith and prohibiting such stations from engaging in exclusive contracts for carriage).

⁹ See 47 U.S.C. 325(b)(3)(C) (as amended by section 103 of the STELAR).

conclusion that the prohibition on joint negotiation in new section 325(b)(3)(C)(iv) is broader than, and thus supersedes, the Commission's existing prohibition.¹⁰

C. Section 103(b) of the STELAR: Protections for Significantly Viewed and Other Television Signals

6. In addition, section 103(b) of the STELAR amends section 325 by adding new subsection 325(b)(3)(C)(v). Read as part of section 325(b)(3)(C) in its entirety, that new subsection directs the Commission to amend its retransmission consent rules:

[to] prohibit a television broadcast station from limiting the ability of a [MVPD] to carry into the local market (as defined in [S]ection 122(j) of title 17, United States Code) of such station a television signal that has been deemed significantly viewed, within the meaning of [S]ection 76.54 of title 47, Code of Federal Regulations, or any successor regulation, or any television broadcast signal such distributor is authorized to carry under [S]ection 338, 339, 340, or 614 of [the] Act, unless such stations are directly or indirectly under common de jure control permitted by the Commission.¹¹

7. Thus, we amend § 76.65(b) of our rules by adding new subsection 76.65(b)(1)(ix), which incorporates the protections for significantly viewed and other television signals established in section 103(b) of the STELAR.

D. Section 105 of the STELAR

8. We amend § 76.1601 of our rules by removing the prohibition on deletion or repositioning of local commercial television stations by cable operators during periods in which major

¹⁰ For example, the prohibition on joint negotiation codified in §76.65(b)(1)(viii) of our existing rules applies by its terms only to same-market "Top Four" television broadcast stations, whereas the new statutory ban applies to all same-market television broadcast stations. Moreover, in contrast to the existing ban on joint negotiation (which permits joint negotiation of retransmission consent by stations that are commonly owned, operated or controlled as determined by the Commission's broadcast attribution rules), the new statutory ban permits joint negotiation only by stations that "are directly or indirectly under common de jure control permitted under the regulations of the Commission." Compare 47 CFR 76.65(b)(1)(viii) with 47 U.S.C. 325(b)(3)(C) (as amended by section 103(a) of the STELAR).

¹¹ See 47 U.S.C. 325(b)(3)(C) (as amended by section 103 of the STELAR).

television ratings services measure such stations' audience size, otherwise known as the "sweeps prohibition."¹² Section 105(a) of the STELAR amends section 614(b)(9) of the Act by eliminating the sweeps prohibition,¹³ and section 105(b) directs the Commission to conform its rules accordingly.¹⁴ Pursuant to Congress's directive in section 105(b), therefore, we amend our rules to eliminate Note 1 of § 76.1601.

E. "Good Cause" under Section 553(b)(B) of the APA

9. Consistent with previous decisions, we amend our rules as set forth above without providing for prior public notice and comment. Our action here is largely ministerial because it simply effectuates new sunset dates or other provisions established by legislation, and requires no exercise of administrative discretion. For this reason, we conclude that prior notice and comment would serve no useful purpose and are unnecessary. We, therefore, find that this action comes within the "good cause" exception to the notice and comment requirements of the APA.¹⁵

III. PROCEDURAL MATTERS

A. Regulatory Flexibility Act

10. Because we adopt this Order without notice and comment, the Regulatory Flexibility Act (RFA) does not apply.¹⁶

¹² See 47 CFR 76.1601, Note 1.

¹³ In particular, section 105(a) of the STELAR amends section 614(b)(9) of the Act by striking the second sentence, which states that "[n]o deletion or repositioning of a local commercial television station shall occur during a period in which major television ratings services measure the size of audiences of local television stations." 47 U.S.C. 534(b)(9).

¹⁴ Section 105(b) of the STELAR provides that "[n]ot later than 90 days after the date of enactment of this Act, the Commission shall revise [S]ection 76.1601 of its rules . . . and any note to such section by removing the [sweeps prohibition]." See Pub. L. 113-200, 128 Stat. 2059, 105(b) (2014).

¹⁵ See 5 U.S.C. 553(b)(B).

¹⁶ See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 et seq., has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104-121, Title II, 110 Stat. 857 (1996). The SBREFA was enacted as Title II of the Contract with America Advancement Act of 1996 (CWAAA).

B. Paperwork Reduction Act

11. This document does not contain any new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA).¹⁷ In addition, therefore, it does not contain any information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.¹⁸

C. Congressional Review Act

12. The Commission will send a copy of this Order in a report to be sent to Congress and the Government Accountability Office, pursuant to the Congressional Review Act.¹⁹

D. Additional Information

13. For more information, contact Raelynn Remy, Raelynn.Remy@fcc.gov, Policy Division, Media Bureau, (202) 418-2936.

IV. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED that, pursuant to the authority found in sections 4(i), 4(j), 303(r), 325 and 614 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 325, and 534, and sections 101, 103 and 105 of the STELA Reauthorization Act of 2014, Pub. L. 113-200, 128 Stat. 2059 (2014), this Order IS ADOPTED and the Commission's rules ARE HEREBY AMENDED as set forth below.

15. IT IS FURTHER ORDERED that, pursuant to the authority found in sections 4(i), 4(j), 303(r), 325 and 614 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 325, and 534, and sections 101, 103 and 105 of the STELA Reauthorization Act of 2014, Pub. L. 113-

¹⁷ The Paperwork Reduction Act of 1995, Pub. L. 104-13, 109 Stat. 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

¹⁸ The Small Business Paperwork Relief Act of 2002 (SBPRA), Pub. L. 107-198, 116 Stat. 729 (2002) (codified in Chapter 35 of title 44 U.S.C.); see 44 U.S.C. 3506(c)(4).

¹⁹ See 5 U.S.C. 801(a)(1)(A).

200, 128 Stat. 2059 (2014), the rules SHALL BE EFFECTIVE thirty (30) days after the date of publication in the Federal Register.

16. IT IS FURTHER ORDERED that the Commission shall send a copy of this Order in MB Docket No. 15-37 in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 76

Cable television.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch,

Secretary.

Final rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

PART 76 – MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. Amend the authority citation for part 76 to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.64 is amended by revising paragraphs (b)(3)(ii) and (l) to read as follows:

§ 76.64 Retransmission consent.

(b)***

(3)***

(ii) The broadcast station is owned or operated by, or affiliated with a broadcasting network, and the household receiving the signal is an unserved household. This paragraph shall terminate at midnight on December 31, 2019, provided that if Congress further extends this date, the rules remain in effect until the statutory authorization expires.

(l) Exclusive retransmission consent agreements are prohibited. No television broadcast station shall make or negotiate any agreement with one multichannel video programming distributor for carriage to the exclusion of other multichannel video programming distributors. This paragraph shall terminate at

midnight on January 1, 2020, provided that if Congress further extends this date, the rules remain in effect until the statutory authorization expires.

3. Section 76.65 is amended by revising paragraph (b)(1)(viii) and by adding paragraph (b)(1)(ix) and revising paragraph (f) to read as follows:

§ 76.65 Good faith and exclusive retransmission consent complaints.

(b) * * *

(1) * * *

(viii) Coordination of negotiations or negotiation on a joint basis by two or more television broadcast stations in the same local market (as defined in 17 USC 122(j)) to grant retransmission consent to a multichannel video programming distributor, unless such stations are directly or indirectly under common de jure control permitted under the regulations of the Commission.

(ix) The imposition by a television broadcast station of limitations on the ability of a multichannel video programming distributor to carry into the local market (as defined in 17 USC 122(j)) of such station a television signal that has been deemed significantly viewed, within the meaning of § 76.54 of this part, or any successor regulation, or any other television broadcast signal such distributor is authorized to carry under 47 USC 338, 339, 340 or 534, unless such stations are directly or indirectly under common de jure control permitted by the Commission.

(f) Termination of rules. This section shall terminate at midnight on January 1, 2020, provided that if Congress further extends this date, the rules remain in effect until the statutory authorization expires.

§ 76.1601 [Amended].

4. Amend § 76.1601 by removing Note 1.

[FR Doc. 2015-04337 Filed 03/02/2015 at 8:45 am; Publication Date: 03/03/2015]